REPORT FOR THE HEARING
in Case C-369/90 *

I — Facts and procedure

1. *Legal background*

Pursuant to Article 9(9) of the Spanish Civil Code,

'For the purposes of this chapter, cases of dual nationality provided for in international law shall be dealt with in accordance with the international treaties and, in the absence of provisions therein, preference shall be given to the nationality corresponding to the most recent habitual residence, failing which the nationality most recently acquired.

In any event, Spanish nationality shall prevail in the case of a person having another nationality not provided for in the laws of Spain or in the international treaties. If the person concerned has two or more nationalities, none of which is Spanish, the provisions of the following paragraph shall apply.'

According to Article 9(10):

'The personal law of persons who have no nationality or are of indeterminate nationality shall be the law of their place of habitual residence.'

2. *The dispute in the main proceedings*

Mario Vicente Micheletti, a dentist, who was born in Rosario, Argentina, on 19 July 1935, is an Argentine national who also has Italian nationality, which he acquired 'pursuant to Law No 555 of 13 June 1912 on Italian citizenship', as is apparent from a letter from the Consulate General for Italy in Rosario. According to a certificate issue by the Consulate General for Italy and Madrid 'he has been entered in the Register of Italian nationals of the present Consulate General under No 362/90 since 6 March 1989'.

On 3 March 1989, Mr Micheletti applied to the Spanish authorities for a temporary Community resident's card, submitting for that purpose a valid Italian passport issued in Rosario on 23 December 1988. The requested card was issued to him on 23 March 1989 for a period of six months, pursuant to Royal Decree No 1099/1986 of 26 May 1986 on the entry, residence and employment of nationals of the Member States of the EEC.

Before his card expired, Mr Micheletti applied for a permanent card of the same kind to be issued to him, to enable him to set up on his own account as a dentist in possession of a qualification recognized by the Spanish Ministry of Education and Science. The Delagación del Gobierno en Cantabria

* Language of the case: Spanish.

(Cantabria Regional Government Office) rejected his application on 2 March 1990.

An administrative appeal against that decision was dismissed on 18 April 1990. Mr Micheletti then brought an appeal before the Tribunal Superior de Justicia (High Court), Cantabria, for annulment of the administration's decision, recognition of his right to obtain the Community resident's card enabling him to carry on a professional activity as a self-employed person and the issue of resident's card to the members of his family, such cards being issued by virtue of the issue of the main card.

It is apparent from the order for reference that the decisions rejecting his applications are based on the fact that, where a person has dual nationality, Article 9 of the Spanish Civil Code determines the nationality of the person concerned as being that corresponding to the habitual residence of that person before he arrived in Spain — Argentina in the present case. Moreover, Mr Micheletti claimed Argentine nationality when he applied to the Spanish Ministry of Education and Science for recognition of his university qualification as a dentist, awarded in Argentina, such recognition being granted on 13 January 1989. In the view of the Spanish administration, Mr Micheletti, as an Argentine national, was therefore not entitled to rely on the provisions applicable to nationals of Member States of the EEC.

For his part, Mr Micheletti considers that he must be regarded in all respects as a Community citizen of Italian nationality. That is apparent both from the abovementioned consular documents and from the certificates of 3 November 1989 and 17 April 1990 issued by the Municipality of Ponte Sul Mincio, Mantua, Italy, which record the fact that he is at present resident in the said municipality.

The national court also states that the dispute raises, in particular, a question of law and a question of appraisal of evidence. The first issue is the interpretation and application to the present case of the final part of Article 9(9) and Article 9(10) of the Spanish Civil Code. The second issue is whether the habitual residence (or, according to the criteria applied, the last residence or actual residence) of the person concerned was Argentina or Italy. The national court also considers that it will have to decide, in consequence, whether or not the applicant is entitled to enjoy the freedoms recognized by the EEC Treaty concerning the right of establishment, in view of the particular features of the transitional provisions contained in the Act of Accession of the Kingdom of Spain. It will be necessary to decide whether, by virtue of domestic law (in particular Royal Decree No 1099/86 of 26 May 1986 on the entry, residence and employment of nationals of Member States of the European Communities), the Community provisions became applicable in the present case at an earlier date than was previously envisaged.

The national court states that it entertains serious doubts as to the compatibility with the relevant principles of Community law of the solution which would be arrived at by virtue of one of the two options put to it (the most foreseeable, if it is decided that the Spanish rules on freedom of movement and establishment in the Community are applicable). Specifically, may the Kingdom of Spain disregard the status as a Community national of the person concerned, which derives from

his Italian nationality, simply because he possesses Argentine nationality and Argentina was previously his country of habitual residence?

The national court points out that, on the one hand, the predominant view in international law tends to uphold the principle of 'effective nationality' (see, in that connection, International Court of Justice, *Nottebohm* case, judgment of 6 April 1955, 1955 ICJ 4, the Opinion of the Permanent Court of Justice of 3 May 1912, in the *Canevaro* case, and the Hague Convention of 12 April 1930, on certain questions relating to conflict of nationality laws). In those circumstances, it is almost immaterial that that principle has been replaced in the Spanish Civil Code by another, subsidiary connecting factor, such as that of habitual residence. It also is apparent from the case-law of the Court of Justice of the European Communities that it is for the Member States, under their own domestic law, to lay down the legal basis for the acquisition of their own nationality. It is specifically that reference to the internal legislation of the Member States which is at the root of the issue in this case. Whilst the Italian Republic has sovereign authority to lay down the conditions for the acquisition of Italian nationality, the Kingdom of Spain has no lesser sovereign authority to deal with situations of dual nationality of non-Member States which come before it.

The national court states that the judgments of the court in *Auer I* and *Auer II* (Case 136/78 [1978] ECR 437 and Case 271/82 [1983] ECR 2727) lay down the general principle that no provision of the Treaty, when applied, allows different treatment to be accorded to the nationals of a Member State depending on the time and manner in which they acquired the nationality of that State, provided that when they seek to rely on Community law they possess the nationality of a Member State. Is that principle, which was laid down where the question raised concerned the acquisition of nationality by naturalization, also applicable to a case like the present one?

In view of the foregoing considerations, the Tribunal Superior de Justicia de Cantabria decided to stay the proceedings and referred the following question to the Court for a preliminary ruling:

'May Articles 3(c), 7, 52, 53 and 56 of the EEC Treaty, and Directive 73/148 and the relevant provisions of secondary law on the free movement of persons and freedom of establishment be interpreted as being compatible and thus as allowing the application of domestic legislation which does not recognize the "Community rights" inherent in a person's status as a national of another Member State of the EEC merely because that person simultaneously possesses the nationality of a non-member country and that country was the place of his habitual residence, his last residence or his actual residence?'

3. *Procedure before the Court*

The order from the Tribunal Superior de Justicia de Cantabria was received at the Court Registry on 14 December 1990.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were lodged on 22 March 1991 by the Commission of the European Communities, represented by Étienne Lasnet, Legal Adviser, and Daniel Calleja, a member of the Commission's Legal Department, acting as Agents, on 26 March 1991 by Mario Vicente Micheletti, represented by Maria del Carmen Simon-Altuna Moreno, Abogado, on 2 April 1991, by the Spanish Government, represented by Carlos Bastarreche Saguës, Director-General for Community legal and institutional coordination, and Antonio Hierro Hernández-Mora, Abogado del Estado, a member of the State Legal Department for matters before the Court of Justice, acting as Agents, and on 4 April 1991 by the Italian Government, represented by Giorgio Ferri, Avvocato dello Stato, acting as agent.

On hearing he report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

II — Summary of the written observations submitted to the Court

Mr Micheletti, the plaintiff in the main proceedings, states first that he was habitually resident in Argentina only prior to entering Spain, that when his application for recognition of his qualification as a dentist was made he had not yet acquired Italian nationality, that the recognition thereof was granted to him under the Agreement between the Kingdom of Spain and the Argentine Republic not on the ground of his nationality but by reason of the fact that the qualification in question was awarded in one of the contracting States and finally, that adequate proof has been produced that he is now permanently and continuously resident in Italy.

Mr Micheletti then maintains that it is for each Member State to decide, under its domestic legislation and without any restriction, which natural persons possess the nationality of that State, subject to the reservation that, in so doing, it must not undermine the objectives of the European Communities. Under those circumstances, the Italian Republic recognizes him as one of its nationals (by virtue of the *jus sanguinis*), therefore issued to him an Italian passport and identity card and entered him in the Italian records of civil status.

The plaintiff in the main proceedings states that Article 1 of Council Directive 73/148/EEC of 21 March 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services (OJ 1973 L 172, p. 14) provides that '1. The Member States shall, acting as provided in this directive, abolish restrictions on the movement and residence of: (a) nationals of a Member State who are established or who wish to establish themselves in another Member State in order to pursue activities as self-employed persons, or who wish to provide services in that State; ... (c) the spouse and the children under twenty-one years of age of such nationals, irrespective of their nationality; ...' Pursuant to Article 2(2) and

(3) of that directive, '2. Member States shall, acting in accordance with their laws, issue to their nationals, or renew, an identity card or passport, which shall state in particular the holder's nationality. 3. The passport must be valid at least for all Member States ...'.

According to Mr Micheletti, by virtue of those provisions, read in conjunction with Article 3(4) of Council Directive 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health (OJ, English Special Edition, 1963-1964 p. 117), which provides that the State 'which issued the identity card or passport shall allow the holder of such document to re-enter its territory without any formality even if the document is no longer valid or the nationality of the holder is in dispute', he is an Italian national, and therefore a Community national, and therefore he may not be discriminated against on grounds of nationality (Article 7 of the EEC Treaty).

The plaintiff in the main proceedings adds that it is apparent from the case-law of the Court concerning freedom of movement that a Member State may not apply national rules which are incompatible with Community law. This means that, in a case like this one, as far as the application of Article 9 of the Spanish Civil Code is concerned, the plaintiff is entitled to have either nationality taken into consideration.

In conclusion, Mr Micheletti maintains that since the Treaty of Accession, Spain is bound by Community law and the provisions thereof cannot be excluded in a case like this one.

The plaintiff in the main proceedings therefore considers that the Court should '... declare inapplicable any provisions of the domestic law of a Member State which do not recognize the Community rights inherent in a person's status as a national of a Member State, namely Italy, merely because the person concerned, Mario Vicente Micheletti, also possesses the nationality of a non-member country, namely Argentina, and because that country was his place of habitual residence before he first came to Spain (since he has now proved that he is legally resident in Italy)'.

The *Italian Government* observes first that, of the Community provisions referred to in the question, Article 52 of the EEC Treaty, a provision which is directly applicable throughout Community territory, is of decisive importance. It is therefore for the national court hearing the proceedings on the exercise of the right of establishment provided for in Article 52 to establish the due existence of that right by applying the provisions of Community law in full and exclusively, since it is Community law which provides a full and inherently adequate legal basis for the claim of the plaintiff in the main proceedings.

The Italian Government states that freedom of establishment may be enjoyed only by persons possessing the nationality of a Member State different from that of the State where the right is exercised.

In the Italian Government's opinion, the grant of the nationality of a Member State is an exclusive prerogative of the State concerned.

Consequently, when Article 52 of the Treaty makes the right of establishment conditional upon possession of the nationality of a Member State, it renders necessary a reference to the national law of the State whose nationality is declared to be the basis of that right, and the provisions of the host Member State can be of no importance in that respect.

That conclusion also applies, in its opinion, where the person concerned has dual nationality (the nationality of a Member State other than the host State and the nationality of a non-Member State).

The Italian Government observes that international law, whilst recognizing the sovereign prerogative of a State to grant and make rules concerning its own nationality, nevertheless places a legal limitation on that prerogative, in the form of the principle of 'effective nationality', by virtue of which the obligation of the other State to recognize such nationality as effective and operational may be correspondingly limited. As the national court points out, it is apparent from the case-law of the International Court of Justice and of the Permanent International Court of Justice that, in cases of dual nationality, a third State is entitled to apply the principle of effectiveness in order to accord predominant importance to one nationality rather than the other.

According to the Italian Government, in the present case it is necessary to determine how that rule of international law may be applied within the Community legal order where it is necessary to ensure that individual rights deriving from a Community provision, such as Article 52 are fully safeguarded throughout the territory of the Community, by virtue of the observance of them required by the Member States in their capacity as host States.

The Italian Government maintains that, by virtue of the very structure and foundations of the Community, the power of a State to give precedence to one of the nationalities possessed by a person cannot be exercised independently by the various Member States.

The principle of effective nationality is capable of being applied in different ways to the same situation by reason of the range of different parameters which may be legitimately used.

As a result, according to the Italian Government, the Community rule which takes the nationality of a Member State as the decisive criterion for the enjoyment of the rights attached thereto is liable to lose its essential status as a single rule uniformly applicable throughout the territory of the Community. Rather than being unconditionally guaranteed by the Treaty, the free movement of persons and services would be subject to the varying development of bilateral relations between the Member States.

The Italian Government therefore considers that the fundamental principles of the EEC Treaty and the aims of Article 52 thereof mean that the rule which the Member States must observe in cases where a person seeking to exercise the right of establishment has dual nationality must necessarily be formulated as a matter of Community law.

The Italian Government maintains that if the nationality of a Member State is based on a substantial and actual link with the Member State itself, the Community cannot do otherwise than recognize the validity and overriding importance of that connection as a factor which brings the person concerned into the sphere of the Community, regardless of any comparative assessment of the two competing nationalities. In such circumstances, the ordinary rule whereby the Community legal order, for the purposes of recognizing the rights granted by Article 52 of the Treaty (or similar rules), opts for recognition of the nationality granted by the Member State, must apply unconditionally.

Turning to more specific considerations regarding the circumstances of the main proceedings, the Italian Government then states that, pursuant to Italian Law No 555 of 13 June 1912 on Italian citizenship, Italian nationality is acquired by birth on the basis of the *jus sanguinis*. In the present case, it appears that the Italian nationality relied on by Mr Micheletti by virtue of a certificate issued by the Consul General for Italy in Rosario was acquired by birth. According to the nationality agreement concluded between the Italian and Argentine Republics, brought into force in Italy by Law No 552 of 18 May 1983 (Gazzeta Ufficiale of the Italian Republic No 152 of 14 June 1973), suspension of the exercise of the rights attaching to Italian nationality acquired by birth is provided for only in cases where the Italian national concerned subsequently acquires Argentine nationality.

In view of those considerations, it must be concluded, in the Italian Government's opinion, that the Italian nationality relied on Mr Micheletti is a fully effective nationality under Italian law (even though at the same time he has Argentine nationality), acquired originally on the basis of a blood relationship (*jus sanguinis*) with the State concerned, which is generally recognized internationally.

The Italian Government considers that it must therefore be acknowledged that Mr Micheletti's Italian nationality is sufficient to guarantee his right of establishment in Community territory, without the exercise of that right being subjected to other conditions (such as habitual residence) laid down by the legislation of the host State.

The *Spanish Government* observes first that the procedure under Article 177 of the EEC Treaty does not enable the Court to give a ruling as to the compatibility of domestic legislation with Community law and state, in the event of a negative answer, whether it is appropriate to disregard the domestic provisions and apply Community law (see in that respect the judgment in Case 26/62 *Van Gend en Loos* [1963] ECR 1).

Accordingly, in its view, the question submitted might be phrased as follows: Must Article 52 of the EEC Treaty be interpreted as meaning that Member State A may not refuse to grant to a person who, under a convention on dual nationality, simultaneously possesses the nationality of Member State B and that of a non-Member State where he resided before going to the territory of State A, the authorization for permanent residence which he needs in order to establish himself as a self-employed person in the latter State?

The Spanish Government contends, once again by way of preliminary, that the action before the national court must be dealt with solely in accordance with domestic Spanish law without the Court being under any obligation to give a ruling on the meaning and scope of Article 52 of the EEC Treaty within the framework of Community law and, still less, to examine the compatibility of that provision with the Spanish legislation. In its view that provision was incorporated in the Spanish legal order by virtue of Articles 93 and 96 of the Constitution and by Royal Decree No 1099/1986, the latter being an implementing measure conforming with Community law.

In the view of the Spanish Government, the issue in the present case is not one of conflict of laws, of the kind with which the Spanish Civil Code purports to deal. The applicable law is Article 52 of the EEC Treaty and Royal Decree No 1099/1986, in so far as it lays down the administrative formalities which the Kingdom of Spain may impose in order to give effect to that freedom for the benefit of Community nationals. The question to be settled derives from a conflict of nationalities and consequently turns on whether a person possessing dual nationality is entitled to rely on one nationality or another, according to his interests, or whether, within a specific legal relationship (in the main proceedings, that relating to the right to receive a permanent Community resident's card for Spain), one of the two nationalities must prevail.

The Spanish Government observes that the traditional approach in international law is that nationality is the sole connecting factor. Thus, at its meeting in Cambridge in 1895 the Institut de Droit International laid down the principle that no person may simultaneously have two nationalities (see to the same effect Article 1 of the Convention on Reduction of Cases of Multiple Nationality concluded within the Council of Europe on 6 May 1963, which has been ratified by all the Member States with the exception of Greece, Portugal and Belgium).

The Spanish Government adds that international law may today accept the principle of dual nationality as a means of strengthening links between certain nations which have common roots or historical bonds. That does not however mean that persons possessing dual nationality may choose one or the other to suit themselves.

The Spanish Government claims in that respect that the most authoritative academic legal writers consider that no person may be the subject of civil, fiscal, political, military and other rights and obligations vis-à-vis two States at the same time. Accordingly, there is a dominant nationality which alone takes full effect and constitutes the political link and must be regarded as the personal law defining the personal status of the person concerned. That view is, it considers, confirmed by the Hague Convention of 12 April 1930 on nationality and by the judgment of the International Court of Justice in the *Nottebohm* case and by the opinion of the Permanent International Court of Justice in the *Canevaro* case.

The Spanish Government maintains that the dominant nationality must be that of the State where the person concerned has established his domicile or habitual residence. The other nationality facilitates travel and establishment of the person concerned in the second country, where it would become the dominant nationality, with the result that the rights associated with the previously dominant nationality would then be suspended.

The Spanish Government considers that where a person with dual nationality moves to a non-Member State, his effective nationality could be determined by such a criterion. Indeed, in such circumstances, his domicile for the purposes of determining political dependence and the applicable legislation is his last domicile in the territory of one of the parties to the agreement on dual nationality.

In other words, in the Spanish Government's view, there is a general principle of international law according to which a person with dual nationality may not be subject simultaneously to the legislation of two States and the law of his place of establishment or of his domicile predominates for the purpose of regulating his legal relationships. Where such a person exercises his rights in a non-member country, the applicable legislation will be determined by his last domicile in the territory of one the States whose nationality he possesses.

The Spanish Government maintains that the impact of the Community provisions on questions of nationality is very limited, indeed marginal.

In the first place, Community citizenship is still today an ambitious project. Article 7 of the EEC Treaty, in so far as it prohibits 'all discrimination on grounds of nationality', is merely a provision which has implications for the law of aliens. Finally, the Community rules, including those on freedom of establishment, refer to the 'nationals of a Member State', leaving the Member State to determine such nationality.

The Spanish Government considers that, in order to determine whether in the present case the person concerned may be entitled to a permanent Community resident's card, it is necessary to establish whether he actually possessed Italian nationality when he sought to exercise the freedom of establishment provided for in Article 52 of the EEC Treaty with direct effect in favour of the nationals of all the Member States (judgment in Case 2/74 *Reyners* [1974] ECR 631).

The Spanish Government observes that the Italian legislation covering Mr Micheletti's dual nationality is represented by the agreement on dual nationality concluded between the Italian and Argentine Republics (hereinafter referred to as 'the Agreement').

The Spanish Government states that, pursuant to Article 1 of the Agreement, Italian and Argentine nationals by birth are entitled respectively to acquire Argentine and Italian nationality in the circumstances and in accordance with the procedures laid down by the legislation in force in each of the contracting

States, whilst retaining their previous nationality, in respect of which the exercise of their rights will be suspended. According to paragraph 2 of the same article, the legislation of the two contracting countries may not in any circumstances apply simultaneously.

The Spanish Government adds that pursuant to Article 4 of the Agreement, a change of residence automatically implies that all the rights and obligations attaching to the other nationality are automatically revived in respect of the person concerned. If such a person establishes himself in the territory of a third State, the residence to be referred to for the purposes of determining the applicable legislation and nationality will, in its opinion, be the most recent residence in the territory of one of the contracting parties.

In view of the foregoing considerations, the Spanish Government maintains that, pursuant to the Agreement which — as is apparent from Article 5 thereof — is a special law as compared with Italian Law No 555, of 13 June 1912 on Italian nationality, Mr Micheletti must be regarded in Spain as an Argentine national, since his habitual place of residence before arriving in Spain was Argentina.

The fact that Mr Micheletti subsequently produced certificates to prove his status as an Italian national now residing in the north of Italy cannot, in its view, detract from the fact that he was of Argentine nationality when he sought to exercise the right in question.

According to the case-law of the Court (in particular the judgment in Case 136/78 *Auer I* [1979] ECR 437), in order to obtain the benefit of the application of Community law, it is necessary not only to meet the conditions for application of the provision in question (in this case, Article 52 of the Treaty) but also effectively to possess, in the opinion of the Spanish Government, the nationality of one of the Member States when the benefit of the provisions in question is sought. However, under Italian legislation, Mr Micheletti was not an Italian national when he applied for the permanent Community resident's card, since, first, his national Italian nationality was latent (see Article 1 of the Agreement) and, secondly, his Argentine nationality was dominant (see Article 4 of the Agreement). Consequently, he could not rely on Article 52 of the EEC Treaty or, therefore, on Royal Decree No 109/1986.

In conclusion, the Spanish Government proposes the following answer to the preliminary question:

'Article 52 of the EEC Treaty must be interpreted as not preventing a Member State A from refusing to grant the right of establishment to a person who, by virtue of an agreement on dual nationality, possesses at the same time the nationality of Member State B and that of a non-member country, where, by virtue of the legislation of Member State B, that person did not in fact possess the latter's nationality when he approached the authorities of Member State A and sought to exercise his right of establishment'.

According to the *Commission*, the fundamental problem before the national court is whether a Member State which, by virtue of its domestic law, does not recognize as legally effective the status of national attributed to a person by another Member State is in breach of the general rules of Community law concerning freedom of establishment.

More specifically, as the national court put it, may a Member State lawfully disregard, for legal purposes, the nationality of a national of another Member State merely on the ground that his habitual residence is or was in a non-member country of which he is also a national? In such circumstances, is it possible to withhold from that Community national rights and freedoms which are granted to him by the Treaties and secondary law?

In the Commission's opinion, it is first necessary to consider the scope and meaning of nationality for the purpose of recognizing the rights and freedoms upheld by the EEC Treaty.

The Commission states that the status of 'national of a Member State' is the decisive factor regarding enjoyment and exercise of the freedoms granted by Community law. Nevertheless, in the absence of relevant Community rules, each Member State freely determines and defines the procedures for the acquisition and loss of nationality and also adopts the rules applicable to cases of dual nationality.

The Commission states in that connection that, in view of the complexity of the subject and the great importance of this issue, certain Member States, such as the Federal Republic of Germany for example, made declarations upon signing the Community Treaties in order to make it clear who are to be regarded as nationals for the purposes of applying the Treaties.

In the Commission's opinion in order to be entitled to the benefit of the Community provisions, the person concerned must in all circumstances have the nationality of a Member State when seeking to rely on the rights embodied in those provisions.

The Commission observes that useful guidance for the answer to be given in this case is available from the case-law of the Court. Thus, in its judgment in *Auer I*, cited above, the Court, in deciding whether it was relevant for the purposes of applying Article 52 of the EEC Treaty that the person concerned, who was initially of Austrian nationality, had acquired French nationality after obtaining his qualification in another Member State, stated that:

'There is no provision of the Treaty which, within the field of application of the Treaty, makes it possible to treat nationals of a Member State differently according to the time at which or the manner in which they acquire the nationality of that State, as long as, at the time at which they rely on the benefit of the provisions of Community law, they possess the nationality of one of the Member States and, in addition, the other conditions for the application of the rule on which they rely are fulfilled',

and:

'Hence, in assessing the rights of a national of a Member State, ... the date on which he acquired the status of a national of a Member State is irrelevant as long as he possesses it at the time at which he relies on the provisions of Community law, the enjoyment of which is linked to the status of a national of a Member State'.

Furthermore, in its judgment in Case 292/86 *Gullung* [1988] ECR 111, the Court was called on to give a ruling on the specific problem of dual nationality. In that case, the issue was whether a person possessing the nationality of two Member States and entitled to practice as a lawyer in one of those Member States could rely on Community law in order to practice the same profession in the other Member State.

The Court answered that question in the affirmative, stating that:

'Freedom of movement for persons, freedom of establishment and freedom to provide services, which are fundamental in the Community system, would not be fully realized if a Member State were entitled to refuse to grant the benefit of the provisions of Community law to those of its nationals who are established in another Member State of which they are also a national and who take advantage of the facilities offered by Community law in order to pursue their activities in the territory of the first State by way of the provision of services'.

The Commission considers that, in the light of the decision cited, it is clear that, regardless of the time, the procedures or the circumstances of the acquisition of Italian nationality by Mr Micheletti, he is to be regarded, provided that he possesses Italian nationality when he seeks to exercise a right directly conferred by the EEC Treaty, as a 'national of another Member State' and therefore a Community national, thus being entitled to the rights conferred by Community law (in this case Article 52 of the Treaty), provided that he meets the other conditions for the application thereof.

In that regard, the Commission observes that it is paradoxical that the Spanish administration should have regarded Mr Micheletti as a Community national in granting him a temporary Community resident's card but refused to grant him a permanent Community resident's card on the ground that he was of Argentine nationality.

The Commission states that it is clearly for the national court to establish, by the means available to it, whether the person concerned actually has the nationality of another Member State and whether his circumstances are such as to be recognized by Community law.

In its opinion, the fact that Mr Micheletti is also a national of a non-member country, that he acquired the status of Community national after acquiring the nationality of a non-Member State or that under national law the latter nationality must prevail by reason of the fact that he resided previously or

most recently in the said non-member country cannot in any way detract from the fact that a national of a Member State who meets the conditions laid down by Community law is entitled to move to and establish himself within another Member State.

The Commission adds that, by analogy, it would also be contrary to Community law for a Member State to seek, for the same reasons, to prevent one of its own nationals from establishing himself in its territory (see in that regard the judgment in Case 115/78 *Knoors* [1979] ECR 399).

The Commission considers that if the Member States were entitled to disregard the status of a national of another Member State, the Community freedoms would not be fully realized and the very foundations of the Community would be undermined. Indeed, in such circumstances, the Member States would be entitled to impose unjustified restrictions or limitations on the provisions of the Treaty, thus detracting from their useful effect.

The Commission therefore proposes the following answer to the question submitted:

'Article 52 of the EEC Treaty prohibits a Member State from refusing to recognize the status as a national of another Member State of a person who meets the conditions laid down by Community law and from impeding the exercise of the right of establishment by that person merely on the ground that he possesses simultaneously the nationality of a non-member country and that country was the place of his habitual residence, his most recent residence or his actual residence'.

J. C. Moitinho de Almeida

Judge-Rapporteur